

## **REMARKS**

In the Office Action of May 1, 2002, Claims 8 - 13 were rejected. Claim 14 was allowed. In response, Claims 9 and 13 are canceled, Claims 8, 10 and 12 are amended, and new Claim 15 is added to the application. Reexamination and reconsideration are respectfully requested in view of the foregoing amendments and the following remarks.

### **Response to Request for Statement on the Record in the Present Application**

#### **Regarding Availability of Microorganisms**

Applicants provide the following Statement regarding the availability of microorganisms:

#### **STATEMENT OF COMPLIANCE WITH 37 CFR 1.801 - 1.809**

Applicants respectfully submit that the strains, *Escherichia coli*, H-9340 (FERM BP-6673), *Escherichia coli*, H-9342 (FERM BP-6675), *Escherichia coli*, H-9343 (FERM BP-6676), described in the above-identified application, have been accepted for deposit under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure and that all restrictions on the availability to the public of the deposited strains will be irrevocably removed upon the issuance of a patent.

#### **Rejection of Claims 10 - 11 under 35 U.S.C. §112, first paragraph**

Claims 10 and 11 were rejected under 35 U.S.C. §112, first paragraph, on the alleged grounds that the specification, while being enabling for mutagens of the genus

Escherichia, does not reasonably provide enablement for the broad claimed "microorganism".

In response, Claim 10 is amended as an independent claim that is directed to a microorganism belonging to the genus Escherichia. Accordingly, it is respectfully submitted that this rejection is thereby overcome.

**Rejection of Claims 8 - 9, 12 and 13 under 35 U.S.C. §102(b)**

Claims 8-9, 12 and 13 are rejected under 35 U.S.C. §102(b) as anticipated by Ivanisevic et al; Filtowcz; Drlica et al; or Hallett et al. The Examiner alleges that each of the references clearly anticipates the claimed microorganism(s) absent a showing to the contrary especially since Escherichia microorganisms are allegedly known to produce L-amino acids.

This rejection is traversed as it may apply to Claims 8 and 12 as amended.

In the amended independent Claim 8, the microorganism of the present invention is limited to a microorganism belonging to the genus Escherichia, having an ability to produce an L-amino acid and having resistance to 1 g/l novobiocin.

As shown in Examples 2 and 3 of the present specification, the microorganism of the present invention which has resistance to 1 g/l novobiocin can produce L-amino acid (in this case, L-histidine) more than its parent strain H-9340 which does not have resistance to 1 g/l novobiocin.

Ivanisevic et al disclose microorganism belonging to Escherichia coli having resistance to 100 to 300 µg of novobiocin per ml. However, they are silent about the amino acid productivity of the microorganism. Furthermore, they do not disclose microorganism belonging to the genus Escherichia having resistance to 1g/l (equivalent

to 1 mg per ml or 1000 µg per ml) novobiocin, or an amino acid productivity of said microorganism.

Filtowcz disclose a microorganism belonging to Escherichia coli having resistance to 200 µg/ml novobiocin. However, they are silent about the amino acid productivity of the microorganism. Furthermore, they do not disclose microorganism belonging to the genus Escherichia having resistance to 1 g/l novobiocin, and an amino acid productivity of said microorganism.

Drlica et al. neither disclose nor suggest any microorganism having resistance to novobiocin.

Hallet et al neither disclose nor suggest any microorganism having resistance to novobiocin.

Thus, none of the cited references disclose nor suggest that a microorganism having resistance to 1 g/l novobiocin can produce amino acids more efficiently. Accordingly, the microorganism according to Claims 8 and 12 is clearly distinguished from the microorganism disclosed by Ivanisevic et al; Filtowcz; Drlica et al; or Hallett et al.

Accordingly, it is respectfully submitted that Claims 8 and 12 are not anticipated by and would not have been obvious over Ivanisevic et al; Filtowcz; Drlica et al; or Hallett et al, alone or in combination.

### **Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 8, 10 - 12 and 14 - 15 are in condition for allowance. Favorable reconsideration is respectfully requested.

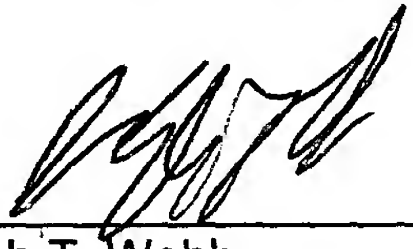
Should the Examiner believe that anything further is necessary to place this application in condition for allowance, the Examiner is requested to contact applicants' undersigned attorney at the telephone number listed below.

Kindly charge any additional fees due, or credit overpayment of fees, to Deposit Account No. 01-2135 (506.39083VX1).

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

By

  
Ralph T. Webb  
Reg. No. 33,047

Attachment: Marked up copy to show changes made

RTW/dlt  
Tel.: (703) 312-6600  
Fax: (703) 312-6666

ATTACHMENT

MARKED UP COPY TO SHOW CHANGES MADE

IN THE CLAIMS:

8. (amended) A microorganism belonging to the genus *Escherichia* and having an ability to produce an L-amino acid and having resistance to 1 g/l novobiocin ~~a DNA gyrase inhibitor~~.

10. (amended) ~~The~~ A microorganism belonging to the genus *Escherichia* and having an ability to produce and L-amino acid ~~according to claim 8 or 9~~, wherein the microorganism has resistance to a DNA gyrase inhibitor and to an aminoquinoline derivative.

12. (amended) The microorganism according to claim 8 or 10 wherein the L-amino acid is L-histidine.